

From: The State Water Resources Control Board
Division of Water Rights

To: Stakeholders and Interested Parties
Groundwater Storage and Aquifer Recharge Streamlined Water Rights Permitting

Date: July 20, 2018

The attached document describes an administrative approach that the State Water Resources Control Board's (State Water Board) Division of Water Rights (Division) is considering to identify applications to appropriate surface water for underground storage that are suitable for streamlined permitting. The Division is circulating the document to solicit feedback and comments from stakeholders and other interested parties.

The approach proposes a simplified water availability analyses for applications that seek to divert water during certain times of the year and only during high flow events. The approach defines 'high flow event' and places conditions on the diversion that are intended to limit the potential for impacts to other users and fish and wildlife, which will significantly reduce staff review time. Specifically, the Board proposes that applications that fit the following criteria can typically be processed on an accelerated timetable: 1) the application only seeks to divert flows that exceed the 90th percentile daily flow level, and no more than 10 to 20 percent of the total flow; 2) the proposed season of diversion is December 1 through March 31, and; 3) the applicant demonstrates, based on readily available information, that the 90th percentile flows exceed the demands of downstream users and the needs of the environment.

Because the approach is administrative, the Division could begin implementation as soon as this fall. Other elements of this approach include the following:

- The proposed approach does not require changes to statute or regulation, with the exception of revision of the fee regulations which can be done by emergency regulation.
- The proposed approach preserves all existing statutory requirements for public notice, protest, and compliance with the California Environmental Quality Act (CEQA).
- The proposed approach complements pending proposed legislation that would authorize temporary 5-year permits for diversion of high flows to underground storage.
- The proposed approach is not mandatory and functions as guidelines only. Other applications will still be accepted, and the Board will review applications for proposed diversions that do not meet the criteria spelled out in the following document. Applications that meet some but not all of the criteria may still be subject to a streamlined process.
- The information and data needs described in the attached document are guidelines. Inclusion of this data and information will help the Division more quickly review and approve appropriate water right applications. These guidelines do not prohibit the submission of

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additional data or information that could help the Division reach a decision. An applicant may choose to provide different types or sets of data as part of their application.

The Division will be seeking input on the proposed approach over the next several weeks, and may solicit in-person meetings, written comments, edits, or other feedback. Please submit all comments and meeting requests to the Division of Water Rights, c/o: Sarah Sugar, Sarah.Sugar@waterboards.ca.gov (916-341-5426).

Streamlined Permitting Process for Diversions of High Flows to Underground Storage

This document contains guidelines for streamlined processing of applications to appropriate high flows for diversion to underground storage and subsequent beneficial use. The purpose of this guidance is to identify circumstances in which avoidance of injury to senior users and instream beneficial uses can typically be demonstrated because of high flow conditions. Applications that fit these criteria can generally be processed more efficiently than standard applications not limited to high flow diversions. This guidance also identifies the types of information that will be needed for State Water Board staff to conduct its review and the sources from which this information can be obtained.

Each application will be considered on a case-by-case basis. Based on the particular application, additional review or conditions may be necessary to support findings or to resolve protests by interested parties. An application that does not fit within these criteria may be approved pursuant to the Board's standard permitting process.

I. Beneficial Use.

Applications for diversion of high flows to underground storage will be accepted for all authorized beneficial uses, including consumptive uses that require extraction of stored water, and uses that occur "in place," such as prevention of seawater intrusion, enhancement of water quality, and prevention of subsidence. Applicants can demonstrate that water will be put to beneficial use by reference to evidence and analysis contained in the Groundwater Sustainability Plan applicable to the proposed place of use.

II. Water Availability

The State Water Board must find that unappropriated water is available for appropriation prior to issuing a permit. (Wat. Code, § 1375.) Senior water rights and environmental needs must be considered when determining whether water is available. State Water Board staff propose a 90th percentile flow during wet months as a metric to define flows that will generally satisfy senior water rights and maintain minimum flows for aquatic species. This metric also has the advantage of being readily available through the USGS Daily Streamflow webpage. State Water Board staff propose a limit on diversion rates of 10% to 20% of available flows to protect natural hydrograph variability and channel maintenance flows, as supported by available literature.¹

III. Projects Subject to Streamlined Permit Processing.

Applications meeting the following requirements will generally result in streamlined processing:

- a. The application proposes to divert water to underground storage in a groundwater basin identified in Bulletin 118.
- b. The application is submitted by a local agency as defined by SGMA.

¹ Richter et al., *A Presumptive Standard for Environmental Flow Protection*, River Res. Applic. (2011).

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- c. The application proposes to divert only “high flows,” where high flows are defined as flows above the 90th percentile. The 90th percentile flow shall be computed from the period of record for the day of the year, in the same manner utilized by USGS to calculate the percentile of daily streamflow conditions: <https://waterdata.usgs.gov/nwis/rt>.
- d. In addition to III.c., some of the following conditions may apply:
 - 1. The application proposes to limit diversions to 10% to 20% of flow available after accounting for any upstream diversions made under the same permit.²
 - 2. The applicant proposes to limit diversions to times during which an onstream reservoir located upstream of the point of diversion is releasing or bypassing water for flood control purposes.
 - 3. The applicant proposes to limit diversions to times during which flows at or downstream of the point of diversion exceed flood stage based on a stream gage relied upon by a flood control agency.
- e. The application proposes to divert water only between December 1 and March 31.
- f. The applicant demonstrates that when there is 90th percentile flow at the proposed point of diversion, downstream flows typically exceed the demands of downstream uses and users:
 - 1. The applicant provides an estimate of the diversion capacity (based on the lesser of physical diversion capacity or legal right to divert) **OR** an estimate of the historical rate of diversions of downstream users with a valid claim of right during the proposed season of diversion.
 - 2. The applicant includes stream flows necessary for the reasonable protection of fish and wildlife as a demand in the analysis.
 - 3. If necessary to demonstrate water availability, the applicant may identify other flow input available to satisfy downstream demand, such as tributary or return flows.
 - 4. The estimates of diversion capacity, legal rights, and historical diversions may be based on information available through eWRIMS. Minimum stream flows may be based on information available in [the new State Water Board database], a permit or order of the Board, the Board’s Cannabis Cultivation Policy, or another source.
- g. The application includes the information required by Water Code section 1260 and the Underground Storage Supplement to Application to Appropriate Water by Permit. The application does not need to identify each well from which water may be withdrawn from storage. If individual wells are not identified, the application must explain the methodology to be used to calculate withdrawal and beneficial use of stored water.

² This provision may also be applied as a cumulative cap on all permits to divert high flows to underground storage from the same source.

IV. Board Review of Application

- Upon receipt of an application, Board staff will verify whether the application meets the conditions for streamlined processing identified in Section II and includes the appropriate fee.
- Staff will review data from the gage or gages most representative of flows at the point of diversion, and compare the 90th percentile flows against the calculated downstream demands. Staff will verify that the downstream demands include an estimate of minimum flows for the reasonable protection of fish and wildlife. If the 90th percentile flows typically exceed downstream demands, additional information from the applicant will not generally be required to demonstrate water availability.
- If in situ beneficial uses are claimed, staff will verify the volume to be used in place by referencing the groundwater sustainability plan for the basin, if available, or other evidence submitted by the applicant.
- Staff will confirm the applicable accounting method, whether based on last-in-first-out, the groundwater sustainability plan, a court decree, or other method. If another method is used, staff will verify its adequacy and the inclusion of an appropriate rate of storage loss.
- Staff will review the environmental documentation for the project to identify significant impacts or mitigation measures to avoid impacts to water resources, and will consider any terms and conditions proposed by the Department of Fish and Wildlife.
- Permits will typically include the permit terms identified below. Permits will only be issued after the Board has made findings specific to the application.

V. Permit Terms.

1. Required bypass flow to protect other water users and instream beneficial uses:

(a) No diversion is authorized by this permit unless flows at a gage located at the point of diversion exceed the calculated 90th percentile flow after accounting for the volume of diversion. "At the point of diversion" means a location in sufficiently close proximity to the point of diversion to provide an accurate representation of stream flow at the diversion structure.

(b) No diversion is authorized by this permit in excess of [10% to 20%] of the flow measured by the gage at the most upstream point of diversion.

*(c) **ALTERNATIVE #1 or #2.** Term #1 shall be included in any permit, unless the applicant requests Term #2 as a substitute.*

#1. No diversion is authorized by this permit unless flows exceed the 90th percentile at a gage located on the same source, downstream of the point of diversion and downstream of other significant diversions.

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#2. The Permittee must cease diversions at the direction of the Deputy Director for Water Rights upon a finding that the diversion threatens to injure downstream senior right holders or instream beneficial uses.

2. If the POD is within the Sacramento-San Joaquin Delta watershed, diversion is conditioned upon satisfaction of Delta requirements:
 - Term 91.
 - Term 93.
 - No limitations on CVP/SWP export rates.
 - Flows at Vernalis meet the requirements of the Bay-Delta Water Quality Control Plan.
3. Reserved jurisdiction:
 - **If the project is located within the Sacramento-San Joaquin Delta watershed:** *The State Water Board is currently in the process of amending the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to establish new and modified Delta tributary inflow and cold water habitat and Delta outflow objectives. The State Water Board reserves jurisdiction over this permit to implement the amended Bay-Delta Plan.*
 - **All permits:** *The State Water Board reserves jurisdiction to revise the required bypass flows and hydrological conditions under which diversions are authorized under this permit based on future studies, reports, gage data, or other information not available when this permit was issued, to maximize the beneficial use of the waters of this state, avoid injury to other legal users, and prevent unreasonable impacts to fish and wildlife. Any action by the Board will be taken only after notice to interested parties and opportunity for hearing.*
4. Groundwater accounting:
 - **If the permittee is end-user:** *Water diverted to storage under this permit for subsequent extraction for beneficial use by the permittee shall be accounted for using the principle of last-in-first-out, and shall be extracted and used prior to reliance on any other basis of right to extract and use groundwater held by the permittee; OR*
 - **If basin has a GSP or judgment of the court dictating an accounting method for water stored in the basin:** *Water diverted to storage under this permit for subsequent extraction for beneficial use shall be accounted for as mandated by the applicable groundwater sustainability plan [or judgment of the court]; OR*
 - **If applicant is not the end-user and there is no existing accounting method:** *Water diverted to storage under this permit may only be extracted for beneficial use by a party other than the permittee pursuant to a written agreement between the rightholder and user consenting to last-in-first-out accounting and extraction and use of water stored*

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under this right prior to reliance on any other basis of right to extract and use groundwater held by the user; OR

- **Alternative by approval of the State Water Board:** *No water may be diverted to storage under this permit unless an accounting methodology that is consistent with accounting by other users in the basin has been approved by the Deputy Director for Water Rights.*

5. Must account for losses from the basin:

The accounting of water stored in a groundwater basin under this permit shall be subject to annual losses as identified by the applicable groundwater sustainability plan or an accounting plan to be submitted to the State Water Board and subject to the approval of the Deputy Director for Water Rights.

6. An application may include diversion to storage of water infiltrated through ditches or other conveyance systems:

Water infiltrated into the basin after diversion from the stream pursuant to this permit shall be credited to storage under this permit, including infiltration that occurs in any conveyance system, after accounting for infiltration that would have naturally occurred absent the diversion.

7. Installation of instream gage immediately upstream or downstream of the point of diversion that meets Division requirements:

No diversion is authorized by this permit unless a telemetry gage is located at the point of diversion. The adequacy of the gage is subject to approval by the Deputy Director for Water Rights and real-time gage data must be made available to the Board.

8. Reporting:

The permittee shall annually account for the volume of water diverted to storage, extracted from storage and beneficially used, and remaining in storage, under this permit. If the permittee is required to report this information to a groundwater sustainability agency, the permittee may satisfy this requirement by submitting the report required by the groundwater sustainability agency to the State Water Board. In addition to this requirement, the permittee must comply with applicable regulations governing measurement and reporting of diversions.

9. The permit shall require any water-related mitigation measures identified by the CEQA document.

10. Conditions shall only be imposed that address potential impacts of the proposed diversions.

11. Priority of the right is the date of application submission.

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12. All standard permit terms shall apply.

13. Water quality: *No agricultural field shall be inundated for infiltration under this temporary permit unless the field has been in compliance with the Irrigated Lands Regulatory Program for, at minimum, the two most recent growing seasons.*

14. The permit expiration term may include an interim milestone for construction of the project, and a final expiration date based on the likelihood of occurrence of a high flow event:

Construction work necessary for complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 20XX. Complete application of the water to the authorized uses shall be made by December 31, 20XX.

VI. Fees

- **Reduced filing fee:** Filing fee for a water right application to divert “high flows” to underground storage and beneficial use shall be \$2,000 or 50% of the fee for standard applications, whichever is greater.
- **Credit for gage installation:** Permittee will receive credit for the cost of installation of a stream gage for streamflow monitoring required by the permit, which credit shall be applied against the first year annual fee.
- **Annual fee based in part on actual diversions:** Annual fee for a permit to divert “high flows” to underground storage and beneficial use will be based in part on the face value of the permit and in part on the actual amount of diversion. The fee will be \$150 plus \$0.0345 per acre-foot of the face-value in excess of 10 acre-feet plus \$0.0345 per acre-foot of the volume of water in excess of 10 acre-feet actually diverted during the preceding water year.
- **No fee upon termination:** If a permit is terminated such that no additional diversions are authorized but the beneficial use of stored water continues, there shall be no annual fee.

VII. Statutory Procedures

Notice of application:

- Must be provided to the district attorney and Board of supervisors of each county where the applicant proposes to divert water. (Wat. Code, § 1300.)
- Must be provided to each person who may be interested in the proposed appropriation (includes all potentially affected water users and persons who requested notification of such applications). (Wat. Code, § 1321.)
- Must be published at least once a week for three consecutive weeks in a newspaper published in the county where the point(s) of diversion lies. (Wat. Code, § 1312.)
- Must be posted in two conspicuous places in the locality affected by the proposed appropriation. (Wat. Code, § 1322.)

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Protests to application:

- Any interested person may protest an application. (Wat. Code, § 1330.)
- A protest may be filed within 60 days from date of issuance of the notice. (Wat. Code, § 1302.)
- A protest may be cancelled if the protestant fails to provide certain information as requested by the Board, see Water Code section 1335.

Change petitions may be unnecessary when “umbrella permits” are issued for multiple points of diversion and inclusive places of use:

- Permits may be issued for many points of diversion, such that a change petition is not required to move diversions from one approved point of diversion to another.
- If the applicant is a public agency, a place of use for the entire service area may be granted, such that a change petition would not be necessary if changes are made to the place of use of water within the approved service area.

VIII. Proposed Board Actions for Implementation:

1. Create written guidance document posted to State Water Board website on application requirements for streamlined permit processing for applications to divert high flows to underground storage.
2. Adopt reduced fee schedule for permits to divert high flows to underground storage.
3. Prioritize processing of permits for projects that fit the streamlined permitting application requirements.